

**UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA**

Jessica Allen, individually and on behalf of
the heirs at Law of Lacey Higdem,

Plaintiff,

VS.

Myles Brunelle, in his individual capacity;
April Azure, in her individual capacity;
Rolette County; Roy Cordy, MD; and
Presentation Medical Center,

Defendants.

Civil No. 3:22-CV-93 (PDW/ARS)

**PLAINTIFF’S MEMORANDUM IN
SUPPORT OF MOTION FOR ORAL
ARGUMENT**

Pursuant to Local Rule 7.1(E), Plaintiff Jessica Allen, individually and on behalf of the heirs at Law of Lacey Higdem, respectfully requests the Court schedule oral argument on the Motion for Summary Judgment filed by April Azure, Myles Brunelle, and Rolette County (the “County Defendants”) on December 16, 2024. (Dkt. 75).

On December 27, 2024, Plaintiff discovered that some of the jail videos produced by Rolette County include audio. (Narine Dec.). The same videos were originally produced by Rolette County on December 19, 2023. Counsel for the County represented there was no audio. (Dkt. 105 at 2). The audio was discovered while preparing Plaintiff's response to the County Defendants' Motion for Summary Judgment. (Noel Dec. 4). Plaintiff notified the County Defendants of this development by letter emailed December 31, 2024, and included an electronic copy of the videos with the audio enabled. (Noel Dec. 5).

The audio includes statements from opposing parties Myles Brunelle and April Azure, i.e. non-hearsay. Fed. R. Evid. 802(d)(2). The County Defendants now argue the audio files are hearsay. Outside the summary judgment pleadings, the County Defendants also expressed “foundation concerns” about the audio. (Noel Dec. 6). Plaintiff has not had an opportunity to

brief the unanticipated hearsay argument. The foundation issue is addressed in the attached Declaration of Ruben Narine (Narine Dec.). Plaintiff requests oral argument so the parties may be fully heard on the admissibility of this crucial evidence.

Oral argument is also requested so that Plaintiff may address two new arguments raised in the County Defendants' Reply Brief filed on February 10, 2025. The brief relies on Dr. Benton Hunter's report—hearsay according to other County arguments—and his deposition. (Dkt. 115 at 7). Dr. Hunter is Plaintiff's retained medical expert who will opine on Defendant Dr. Roy Cordy's failure to meet the standard of care. Dr. Hunter's name did not appear in the County Defendants' initial brief, nor in Plaintiff's responsive memorandum.

The County Defendants' Reply Brief also takes issue with Plaintiff's reliance on Brianna Mayer and Stephanie Myers. (Dkt. 115 at 4-5). Both witnesses were the subject of testimony in the first deposition in the case taken on January 29, 2024. (Noel Dec. 7). And both witnesses were identified in Plaintiff's Supplemental Rule 26 Disclosures served on April 5, 2024. *Id.* Discovery did not close until June 3, 2024. (Dkt. 40). These new arguments raised in reply briefing provide additional support for Plaintiff's request for oral argument.

Respectfully submitted,

Dated: February 11, 2025

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